

HOUSE BILL 1370

P2, P1

0lr2351
CF 0lr3366

By: **Delegates Branch, Gaines, Bohanan, Bronrott, Conway, Haynes, Hixson,
and James**

Introduced and read first time: February 18, 2010

Assigned to: Appropriations and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Public-Private Partnerships - Oversight**

3 FOR the purpose of requiring certain State agencies to submit a report concerning a
4 proposed public-private partnership to certain committees of the General
5 Assembly at a certain time prior to issuing a public notice of solicitation for the
6 public-private partnership; requiring certain State agencies to submit an
7 annual report concerning public-private partnerships that are under
8 consideration to certain committees of the General Assembly; requiring certain
9 State agencies to submit an annual report concerning existing public-private
10 partnerships to certain committees of the General Assembly; requiring certain
11 units of State government to submit an annual report concerning public-private
12 partnerships for which the unit is providing conduit financing to certain
13 committees of the General Assembly; requiring the State Treasurer to analyze
14 the impact of a public-private partnership operating lease on the State's capital
15 debt affordability limits; requiring the State Treasurer to submit each analysis
16 of a public-private partnership operating lease to certain committees of the
17 General Assembly; prohibiting the Board of Public Works from approving a
18 public-private partnership operating lease until certain committees of the
19 General Assembly have commented on the State Treasurer's analysis of the
20 lease; requiring that the annual report of the Capital Debt Affordability
21 Committee include certain information concerning the impact of public-private
22 partnership operating leases; establishing a Joint Legislative and Executive
23 Commission on Oversight of Public-Private Partnerships; specifying the
24 membership of the Commission; providing for the chair and staffing of the
25 Commission; prohibiting a member of the Commission from receiving certain
26 compensation but authorizing a member of the Commission to receive certain
27 reimbursements; requiring the Commission to study and make
28 recommendations regarding certain issues; requiring the Commission to report
29 its findings and recommendations to the Governor and the General Assembly on
30 or before a certain date; repealing certain provisions of law requiring the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Maryland Transportation Authority to provide certain information to certain
 2 committees of the General Assembly concerning public–private partnerships;
 3 providing that certain committees of the General Assembly have a certain
 4 period of time to review and comment on reports submitted under this Act;
 5 defining certain terms; providing for the termination of certain provisions of
 6 this Act; and generally relating to oversight of public–private partnerships.

7 BY adding to

8 Article – State Finance and Procurement
 9 Section 10A–101 and 10A–102 to be under the new title “Title 10A.
 10 Public–Private Partnerships”
 11 Annotated Code of Maryland
 12 (2009 Replacement Volume)

13 BY repealing and reenacting, with amendments,

14 Article – Transportation
 15 Section 4–205(c)
 16 Annotated Code of Maryland
 17 (2008 Replacement Volume and 2009 Supplement)

18 BY adding to

19 Article – Transportation
 20 Section 4–406
 21 Annotated Code of Maryland
 22 (2008 Replacement Volume and 2009 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – State Finance and Procurement**

26 **TITLE 10A. PUBLIC–PRIVATE PARTNERSHIPS.**

27 **10A–101.**

28 **(A) (1) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 29 **INDICATED.**

30 **(2) “BUDGET COMMITTEES” MEANS THE SENATE BUDGET AND**
 31 **TAXATION COMMITTEE, THE HOUSE COMMITTEE ON WAYS AND MEANS, AND**
 32 **THE HOUSE APPROPRIATIONS COMMITTEE.**

33 **(3) “PRIVATE ENTITY” MEANS AN INDIVIDUAL, A CORPORATION,**
 34 **A GENERAL OR LIMITED PARTNERSHIP, A LIMITED LIABILITY COMPANY, A JOINT**
 35 **VENTURE, A BUSINESS TRUST, A PUBLIC BENEFIT CORPORATION, A NONPROFIT**
 36 **ENTITY, OR ANOTHER BUSINESS ENTITY.**

1 **(4) “PUBLIC NOTICE OF SOLICITATION” INCLUDES A REQUEST**
2 **FOR EXPRESSIONS OF INTEREST, A REQUEST FOR PROPOSALS, A MEMORANDUM**
3 **OF UNDERSTANDING, AN INTERIM DEVELOPMENT AGREEMENT, A LETTER OF**
4 **INTENT, OR A PRELIMINARY DEVELOPMENT PLAN.**

5 **(5) (I) “PUBLIC-PRIVATE PARTNERSHIP” MEANS A SALE OR**
6 **LONG-TERM LEASE AGREEMENT BETWEEN A CONTRACTING AGENCY AND A**
7 **PRIVATE ENTITY UNDER WHICH:**

8 **1. THE PRIVATE ENTITY ASSUMES CONTROL OF THE**
9 **OPERATION AND MAINTENANCE OF AN EXISTING STATE FACILITY; OR**

10 **2. THE PRIVATE ENTITY CONSTRUCTS,**
11 **RECONSTRUCTS, FINANCES, OR OPERATES A STATE FACILITY AND IS**
12 **AUTHORIZED TO COLLECT CHARGES, RENTS, OR TOLLS FOR THE USE OF THE**
13 **FACILITY.**

14 **(II) “PUBLIC-PRIVATE PARTNERSHIP” DOES NOT INCLUDE:**

15 **1. A LEASE ENTERED INTO IN THE ORDINARY**
16 **COURSE OF BUSINESS BY A UNIT OF STATE GOVERNMENT AND A PRIVATE**
17 **ENTITY IF APPROVED UNDER § 10-305 OF THIS ARTICLE; OR**

18 **2. A PROCUREMENT GOVERNED BY DIVISION II OF**
19 **THIS ARTICLE.**

20 **(6) “REPORTING AGENCY” MEANS:**

21 **(I) THE DEPARTMENT OF GENERAL SERVICES;**

22 **(II) THE MARYLAND DEPARTMENT OF TRANSPORTATION;**

23 **(III) THE UNIVERSITY SYSTEM OF MARYLAND;**

24 **(IV) MORGAN STATE UNIVERSITY;**

25 **(V) ST. MARY’S COLLEGE OF MARYLAND; AND**

26 **(VI) THE BALTIMORE CITY COMMUNITY COLLEGE.**

27 **(B) (1) THE REPORTS PROVIDED BY THE DEPARTMENT OF GENERAL**
28 **SERVICES UNDER THIS SECTION SHALL INCLUDE INFORMATION CONCERNING**
29 **ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN THE**

1 EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS THAT
2 ARE ALSO REPORTING AGENCIES.

3 (2) FOLLOWING THE SUBMISSION OF EACH OF THE REPORTS
4 REQUIRED UNDER THIS SECTION, THE BUDGET COMMITTEES SHALL HAVE 45
5 DAYS TO REVIEW AND COMMENT ON THE REPORTS.

6 (C) (1) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC NOTICE
7 OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP, A REPORTING
8 AGENCY SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH §
9 2-1246 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING THE
10 PROPOSED PUBLIC-PRIVATE PARTNERSHIP.

11 (2) BY JULY 1 OF EACH YEAR, EACH REPORTING AGENCY SHALL
12 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
13 STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH
14 PUBLIC-PRIVATE PARTNERSHIP UNDER CONSIDERATION AT THAT TIME BY THE
15 REPORTING AGENCY THAT HAS NOT BEEN REVIEWED OR APPROVED
16 PREVIOUSLY BY THE GENERAL ASSEMBLY.

17 (3) BY JANUARY 1 OF EACH YEAR, EACH REPORTING AGENCY
18 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
19 OF THE STATE GOVERNMENT ARTICLE, A STATUS REPORT CONCERNING EACH
20 EXISTING PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY
21 IS INVOLVED.

22 (D) BY JULY 1 OF EACH YEAR, A UNIT OF STATE GOVERNMENT THAT
23 PROVIDES CONDUIT FINANCING FOR A PUBLIC-PRIVATE PARTNERSHIP SHALL
24 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
25 STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH
26 PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE UNIT IS PROVIDING CONDUIT
27 FINANCING.

28 10A-102.

29 (A) THE STATE TREASURER SHALL ANALYZE THE IMPACT OF EACH
30 PUBLIC-PRIVATE PARTNERSHIP OPERATING LEASE ENTERED INTO BY A UNIT
31 OF STATE GOVERNMENT ON THE STATE'S CAPITAL DEBT AFFORDABILITY
32 LIMITS.

33 (B) (1) THE STATE TREASURER SHALL SUBMIT TO THE BUDGET
34 COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
35 ARTICLE, EACH ANALYSIS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

1 3. “Public-private partnership arrangement” means a
2 lease agreement between the Authority and a private entity under which the private
3 entity assumes control of the operation and maintenance of an existing or future
4 revenue-producing highway, bridge, tunnel, or transit facility.

5 (ii) Not less than 45 days before issuing a public notice of
6 procurement related to a public-private partnership arrangement, subject to § 2-1246
7 of the State Government Article, the Authority shall provide, to the Senate Budget
8 and Taxation Committee, the House Committee on Ways and Means, and the House
9 Appropriations Committee, for review and comment, and to the Department of
10 Legislative Services, a summary of the proposed procurement document to be used for
11 solicitation of the public-private partnership arrangement.

12 (iii) Not less than 45 days before entering into any
13 public-private partnership arrangement, subject to § 2-1246 of the State Government
14 Article, the Authority shall provide, to the Senate Budget and Taxation Committee,
15 the House Committee on Ways and Means, and the House Appropriations Committee,
16 for review and comment, and to the Department of Legislative Services, a description
17 of the proposed lease agreement and a financing plan, including:

- 18 1. The length of the proposed lease;
- 19 2. The scope of any toll-setting authority to be granted
20 to the private entity;
- 21 3. The scope of payments to the Authority from the
22 proposed public-private partnership arrangement;
- 23 4. A cost-benefit analysis of the proposed public-private
24 partnership arrangement; and
- 25 5. Requirements pertaining to the ongoing operation and
26 maintenance of the facility and contract oversight.]

27 **4-406.**

28 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
29 **MEANINGS INDICATED.**

30 **(2) “BUDGET COMMITTEES” MEANS THE SENATE BUDGET AND**
31 **TAXATION COMMITTEE, THE HOUSE COMMITTEE ON WAYS AND MEANS, AND**
32 **THE HOUSE APPROPRIATIONS COMMITTEE.**

33 **(3) “PRIVATE ENTITY” MEANS AN INDIVIDUAL, A CORPORATION,**
34 **A GENERAL OR LIMITED PARTNERSHIP, A LIMITED LIABILITY COMPANY, A JOINT**

1 VENTURE, A BUSINESS TRUST, A PUBLIC BENEFIT CORPORATION, A NONPROFIT
2 ENTITY, OR ANOTHER BUSINESS ENTITY.

3 (4) "PUBLIC NOTICE OF SOLICITATION" INCLUDES A REQUEST
4 FOR EXPRESSIONS OF INTEREST, A REQUEST FOR PROPOSALS, A MEMORANDUM
5 OF UNDERSTANDING, AN INTERIM DEVELOPMENT AGREEMENT, A LETTER OF
6 INTENT, OR A PRELIMINARY DEVELOPMENT PLAN.

7 (5) (I) "PUBLIC-PRIVATE PARTNERSHIP" MEANS A SALE OR
8 LONG-TERM LEASE AGREEMENT BETWEEN THE AUTHORITY AND A PRIVATE
9 ENTITY UNDER WHICH:

10 1. THE PRIVATE ENTITY ASSUMES CONTROL OF THE
11 OPERATION AND MAINTENANCE OF AN EXISTING STATE FACILITY; OR

12 2. THE PRIVATE ENTITY CONSTRUCTS,
13 RECONSTRUCTS, FINANCES, OR OPERATES A STATE FACILITY AND IS
14 AUTHORIZED TO COLLECT CHARGES, RENTS, OR TOLLS FOR THE USE OF THE
15 FACILITY.

16 (II) "PUBLIC-PRIVATE PARTNERSHIP" DOES NOT INCLUDE:

17 1. A LEASE ENTERED INTO IN THE ORDINARY
18 COURSE OF BUSINESS BY THE AUTHORITY AND A PRIVATE ENTITY IF APPROVED
19 UNDER § 10-305 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; OR

20 2. A PROCUREMENT GOVERNED BY DIVISION II OF
21 THE STATE FINANCE AND PROCUREMENT ARTICLE.

22 (B) FOLLOWING THE SUBMISSION OF EACH OF THE REPORTS REQUIRED
23 UNDER THIS SECTION, THE BUDGET COMMITTEES SHALL HAVE 45 DAYS TO
24 REVIEW AND COMMENT ON THE REPORTS.

25 (C) (1) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC NOTICE
26 OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP, THE AUTHORITY
27 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
28 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING THE PROPOSED
29 PUBLIC-PRIVATE PARTNERSHIP.

30 (2) BY JULY 1 OF EACH YEAR, THE AUTHORITY SHALL SUBMIT TO
31 THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE
32 GOVERNMENT ARTICLE, A REPORT CONCERNING EACH PUBLIC-PRIVATE
33 PARTNERSHIP UNDER CONSIDERATION AT THAT TIME BY THE AUTHORITY THAT

1 HAS NOT BEEN REVIEWED OR APPROVED PREVIOUSLY BY THE GENERAL
2 ASSEMBLY.

3 (3) BY JANUARY 1 OF EACH YEAR, THE AUTHORITY SHALL
4 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
5 STATE GOVERNMENT ARTICLE, A STATUS REPORT CONCERNING EACH
6 EXISTING PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE AUTHORITY IS
7 INVOLVED.

8 (D) BY JULY 1 OF EACH YEAR, THE AUTHORITY SHALL SUBMIT TO THE
9 BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE
10 GOVERNMENT ARTICLE, A REPORT CONCERNING EACH PUBLIC-PRIVATE
11 PARTNERSHIP FOR WHICH THE AUTHORITY IS PROVIDING CONDUIT FINANCING.

12 SECTION 2. AND BE IT FURTHER ENACTED, That:

13 (a) There is a Joint Legislative and Executive Commission on Oversight of
14 Public-Private Partnerships.

15 (b) The Commission consists of the following members:

16 (1) two members of the Senate of Maryland, appointed by the
17 President of the Senate;

18 (2) two members of the House of Delegates, appointed by the Speaker
19 of the House;

20 (3) the Secretary of Budget and Management, or the Secretary's
21 designee;

22 (4) the Secretary of General Services, or the Secretary's designee;

23 (5) the Secretary of Transportation, or the Secretary's designee;

24 (6) the Chancellor of the University System of Maryland, or the
25 Chancellor's designee;

26 (7) the State Treasurer, or the State Treasurer's designee;

27 (8) the Executive Director of the Maryland Stadium Authority, or the
28 Executive Director's designee;

29 (9) the Executive Director of the Maryland Economic Development
30 Corporation, or the Executive Director's designee;

1 (10) the President of the Baltimore City Community College, or the
2 President's designee;

3 (11) the President of Morgan State University, or the President's
4 designee;

5 (12) the President of St. Mary's College of Maryland, or the President's
6 designee; and

7 (13) a representative of the private sector who has experience and
8 expertise in developing public-private partnerships, appointed by the Governor in
9 consultation with the President of the Senate and the Speaker of the House.

10 (c) The Governor shall designate the chair of the Commission.

11 (d) The Department of Budget and Management and the Department of
12 Legislative Services shall provide staff for the Commission.

13 (e) A member of the Commission:

14 (1) may not receive compensation as a member of the Commission; but

15 (2) is entitled to reimbursement for expenses under the Standard
16 State Travel Regulations, as provided in the State budget.

17 (f) The Commission shall:

18 (1) assess the oversight, best practices, and approval processes for
19 public-private partnerships in other states, including the Army Enhanced Use Lease
20 Program;

21 (2) evaluate the statutory definition of "public-private partnership",
22 as enacted by Section 1 of this Act, and recommend any amendments to the definition
23 to enhance its utility and refine its scope;

24 (3) make recommendations concerning the appropriate manner of
25 conducting ongoing legislative monitoring and oversight of public-private
26 partnerships, including the following issues:

27 (i) the appropriate time for submission for legislative review of
28 a proposed conceptual plan, a letter of intent, an interim development agreement, a
29 master development agreement, and an operating lease for a public-private
30 partnership;

31 (ii) the need for a State agency to state its justifications for
32 seeking a public-private partnership before issuing a request for proposals or any
33 other solicitation;

1 (iii) the appropriate way to assess the effects of a public-private
2 partnership on the State budget, including the aggregate effect on spending by fund
3 source and revenues;

4 (iv) the need for disclosure of all public-private partnership
5 revenue and expenditure data and assumptions;

6 (v) the need for disclosure of all public-private partnership
7 financing assumptions, including projected return on investment and a cost-benefit
8 analysis; and

9 (vi) the appropriate periods for legislative review and comment;
10 and

11 (4) make recommendations concerning broad policy parameters within
12 which public-private partnerships should be negotiated, which may include the
13 following issues:

14 (i) the processes for reviewing and approving a letter of intent,
15 an interim development agreement, a master development agreement, an operating
16 lease, and a request for qualifications;

17 (ii) the length of a public-private partnership agreement,
18 including ground rent, operating leases, and renewal terms;

19 (iii) noncompete clauses and adverse action clauses;

20 (iv) revenue-sharing;

21 (v) limits on the timing and size of rent, toll, or other revenue
22 source increases;

23 (vi) the use of proceeds from concession agreements;

24 (vii) guidelines on minority business enterprise involvement and
25 goals;

26 (viii) performance measures that are linked to State payments;

27 (ix) the number and timing of appraisals of land and structures;

28 (x) green building requirements;

29 (xi) structuring public-private partnerships in a manner that
30 preserves and promotes important State policy objectives;

31 (xii) contract oversight and remedies for default;

- 1 (xiii) police jurisdiction;
- 2 (xiv) eminent domain;
- 3 (xv) maintenance requirements;
- 4 (xvi) solicitation of public comment regarding proposed
5 public-private partnerships and proposed toll rates or user rates;
- 6 (xvii) methods for developing competitive solicitations for
7 public-private partnerships, including the advisability of establishing a special fund to
8 reimburse a private entity for predevelopment expenses;
- 9 (xviii) the role of the Maryland Economic Development Corporation
10 or other State entities in the issuance of tax increment financing bonds,
11 tax-exempt financing, or other conduit financing;
- 12 (xix) the effect on the State workforce of requiring a private entity
13 to give a hiring preference to State employees;
- 14 (xx) a policy on foreign ownership of State assets and
15 requirements to meet conditions of the Committee on Foreign Investment in the
16 United States;
- 17 (xxi) the transition and process for the return of assets to State
18 control at the conclusion of a public-private partnership agreement;
- 19 (xxii) the time period for assignment of a lease or sale of facilities
20 without requiring State consent or providing the State the right of first refusal; and
- 21 (xxiii) the advisability of considering unsolicited public-private
22 partnership proposals.

23 (g) On or before December 1, 2011, the Commission shall report its findings
24 and legislative recommendations concerning the issues outlined in subsection (f) of
25 this section for consideration during the 2012 regular session of the General Assembly
26 to the Governor and, in accordance with § 2-1246 of the State Government Article, the
27 General Assembly.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 June 1, 2010. Section 2 of this Act shall remain effective for a period of 2 years and, at
30 the end of May 31, 2012, with no further action required by the General Assembly,
31 Section 2 of this Act shall be abrogated and of no further force and effect.